

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEY RECYCLING, LLC,
Plaintiff,

v.

APPLIANCE AND RECYCLING
CENTERS OF AMERICA,
Defendant.

CIVIL ACTION

NO. 18-1656

O R D E R

AND NOW, this 24th day of September, 2018, upon consideration of Defendant Appliance Recycling Centers of America, Inc.'s ("ARCA") Motion to Dismiss (ECF No. 18), Plaintiff's Response in Opposition thereto (ECF No. 19), the Reply in Further Support thereof (ECF No. 20), as well as Plaintiff's Sur Reply Brief in Opposition (ECF No. 23), **IT IS** **HEREBY ORDERED** as follows:

(1) Defendant ARCA's Motion to Dismiss (ECF No. 18) is **GRANTED IN PART AND DENIED IN PART**.

- a. Defendant's Motion to Dismiss Count One (False Advertising) is **DENIED**.
- b. Defendant's Motion to Dismiss Count Two (False Designation of Origin) is **GRANTED**. Count Two is dismissed **WITH PREJUDICE**.
- c. Defendant's Motion to Dismiss Count Three (Unfair Competition) is **GRANTED IN PART AND DENIED IN PART**. Defendant's Motion to Dismiss Count Three is **DENIED** on a theory of false advertisement. Defendant's Motion to Dismiss Count Three is **GRANTED** on a theory of false designation of origin. Count Three is dismissed **WITH PREJUDICE** as to the theory of false designation of origin.

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.